

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

MAR 02 2018

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORKLAWRENCE K. BAERMAN, CLERK
ALBANY

Lisa Falvotico Plaintiff(s)

vs.

Kingston City
School District Defendant(s)Civil Case No.: 1:18-CV-268
TJM/DJS
COMPLAINT PURSUANT
TO THE AMERICANS
WITH DISABILITIES ACTPlaintiff(s) demand(s) a trial by: JURY ☒ COURT (Select only one).

Plaintiff(s) in the above-captioned action, allege(s) as follows:

JURISDICTION

1. This is a civil action seeking judgment, relief and/or damages brought pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, as amended, for discrimination based upon a disability and the failure to accommodate same. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1343(4).

PARTIES

2. a. Plaintiff: Lisa Falvotico
 Address: 296 Maverick Road
Woodstock, N.Y. 12498

b. Plaintiff: _____
 Address: _____

Additional Plaintiffs may be added on a separate sheet of paper.

3. a. Defendant: Kingston City School District

Official Position: _____

Address: 61 Crown Street
Kingston, N.Y. 12401

b. Defendant: _____

Official Position: _____

Address: _____

Additional Defendants may be added on a separate sheet of paper.

4. My disability is as follows:

I have an impairment that is episodic
in nature. It is exacerbated by extreme
heat. My immune system has become
weakened with age and more difficult
to suppress this virus. When the
virus is active, it begins with flu-
like symptoms. Swollen glands, extremely
painful headaches, shooting pain down
my legs and lesions.

#4 disability (continued)

These symptoms limit my mobility and everyday functions such as walking, sitting, sleeping and defecating. The onset is 2-4 days with symptoms from above. The virus itself lasts 2-3 weeks, until the next time. Through the care of my physicians, we have been able to control the number of episodes and I have been living with virus for many years. I take medication daily, eat foods that do not exacerbate my condition. I exercise and get rest as recommended by my physicians. The one factor I am unable to control in my work environment, is the extreme heat in my classroom. I put in a medical request for an air condition unit for the window in my classroom. I have documentation (photos), showing temps of 100 degrees Fahrenheit. Administration has been made notified of the extreme heat conditions of the classrooms in our building. As I age, my immune system is defenseless against the virus when it becomes stressed. Heat is one of the stressors that weakens my immune system and causes an episode. The episodes have become more frequent as I age.

#6 Facts

#1. August 2015- I had a meeting with former principal Jo Burruby. I told her that the previous school year 2014-2015, had been difficult for me during certain periods throughout the year due to the extreme hot temperatures in my classroom. I told her that I had a condition that had been getting worse with age and now hot temperature exposure. She said there was nothing she could do, that I would have to get in touch with Carol Bell, confidential secretary to Allen Olsen, Deputy Superintendent for human resources and business.

#2. I contacted Carol bell by email 8/31/15 a.m. She sent me a HIPPA release for district to speak with my doctor and necessary documents to fill out. I responded requesting district doctor's name, Dr. Woodley and gave consent for my doctor to speak with him.

#3. I filled out paperwork, handed in my doctor's note for request of an air conditioning unit for my classroom. This was handed in the following week at Central Administration Office, 61 Crown Street, Kingston, N.Y. 12401

#4. I did not hear anything throughout first half of the school year. I emailed Carol Bell on 3/8/16 expressing my concerns, as I watch the weather and saw that the temps were going be unusually high for March. 75 degrees on 3/9/16, 79 degrees on 3/10/16. This in an outside temperature which means my classroom facing southeast, 2nd floor will be 10-15 degrees hotter. No response from Ms. Bell.

#5. 3/16/16 I emailed Ms. Bell again and she forwarded the email to Mr. Olsen and Mr. Clapper. Again, No response from either administrator.

#6. 4/11/16 I sent Ms. Bell another email asking if in fact these were the correct people, as I had no response from either. I also left a phone message for Mr. Olsen to call me. He never called.

#7. I emailed Ms. Bell again asking for suggestions as neither administrators would respond to me. She said she would look into it and check with Mr. Olsen. Again, no response.

***Note.** At the time the principal Ms. Burruby was helping another teacher in our building with her medical request, as she was having trouble with her allergies. The principal and the teacher are friends. The teacher disclosed this information openly in a math meeting. This is the same principal that told me there was nothing she could do. Union got back to me and said this was an ADA issue.

#9. 10:08 a.m.

I sent an email to Mr. Olsen saying I had hand delivered a medical request, emailed many times with no return correspondence, and left phone message. Still, he had not responded to me. Ms. Bell was always trying to help, but ultimately he is the "boss."

#10. 9/9/16 That afternoon Ms. Bell emailed me asking for another copy of the doctors note. 1 year later. She said she would look around some more and see if she could find it.

#11. 10/18/16

I sent another email because it was 83degrees in my classroom for most of the week prior to this email.

I stated that I had cooperated with everything the district has aske me to do. I spent \$189 on a super powerful fan. I told her that my 4 small windows do not help, plus the 3 other fans that I have. Also stated that as I sit in my home on Saturday, I am unable to complete my home and community tasks, because i ended up having an episode. This was all stated in an email.

#12. 10/13/16

I received an email from Ms. Bell that the doctor's note was definitely missing. They would need another one. That is when I started documenting (photos) of the temperatures that were extreme.

Some of the temps... 2/16 @ 9:24 a.m. 95 degrees; 3/2 8:02 a.m. 89 degrees; 3/3 9:24 a.m. 102 degrees 3/17 90 degrees. These are just a few.

#13. The heating system for our building is turned on from a different location. It is always on, so as a result of this, when temps are 50 degrees, 60 degrees, 70 degrees the temperatures are oppressive in the 4 classrooms upstairs that face southeast. You cannot physical turn the heat off in your classroom. This puts stress on my body and I end up having an episode.

#14. 3/24/17 Maintenance showed up and looked at the windows, I assumed my medical request was being granted. No, it was not. They came to make sure I had a window that could open, because they were told my room had no functioning windows. There are 3 windows that open out 8 inches and 1 window that opens out 12 inches. I was deflated as I could not believe that this was what was becoming of a medical for a disability.

#15 3/27/17 3 days after maintenance visit.

I received a letter at my home from Allen Olsen stating my medical request was denied. The letter said, "Feel free to call" I did. No return call. I had an episode that was beginning and full blown by Sunday of

that weekend. I went to the doctors on Tuesday to document the episode. I then sent the extremely private doctor report to Dr. Woodley and Central Administration, on 4/4/17. I again, had no response. I emailed Dr. Woodley on 4/28/2017 @ 11:49. I called his practice also, left a message to call back. Again, no response.

#16. So, I waited, then again on 5/18/17 I emailed Ms. Bell and she was told to resend the denied letter via email. I told her I had received it and resubmitted the report from my doctor to Dr. Woodley and Mr. Olsen concerning my condition. I also attached a picture of the thermometer reading 86.1 degrees @ 9:59 a.m. No response.

#17.

On Monday, 6/12/17 @ 7:35 a.m. it was 85.8degrees in my classroom. The high that day outside was 93 degrees. The next day Tuesday 6/13/17 I took a photo of the thermometer while I was sitting at my desk waiting for the students to arrive back to my classroom. It was 93degrees. I had the 4 windows opened and 4 fans running. Many students went home sick that day. I ended up in the Nurses office as the heat ended up making me feel faint. I was escorted to the nurses office by another teacher. I have the nure office report that I was feeling faint. I rest on the cot. My pulse was 60 bp 120/84(ver high for me) My husband came and picked me up. We went straight to the doctor's office. My body became stressed and I ended up with an episode a week later.6/20/17

#18 I filed a charge with the EEOC and was contacted by an agent (caseworker) In 11/17. We had limited email exchanges.

11/7/17 He asked me questions via email. This was a two day exchange of questions he asked me. He felt after I answered the questions it was more of an OSHA issue than one for the EEOC.I asked if he could call me so we could talk and I could be more thorough. I did not hear from him again.

#19 I emailed him again on 11/15/17 and asked what other documentation I could provide to help with my case. He said he would look it over and get back to me.

#20 12/6/17 I received a letter saying the EEOC did not find in my favor and it stated I had "right to sue.". I immediately sent an email and voicemail as on that letter was the caseworkrs phone number which I never had until I was denied, stating that I felt I was being discriminated against by the agency that was supposed to help me. I stated that I never had a chance to send more evidence/ documentation, or even what I was supposed to send. He called me immediately, justifying his decision. He said I could send a letter of " Request for Reconsideration." I sent it.

#20 I also told Mr. Reo(caseworker) that I had a private conversation with a co-worker Jaqueline Mann. She is in the classroom next to mine. She had previously put in a medical request for an AC unit .

In Spring of 2017 the EEOC found in her favor for her medical request the district denied. We have the same condition.

#21 2/2/17 I called Mr. Reo and asked if there was any way he could expedite the process for resubmission, as my 90 days was approaching and I was hoping I wouldn't have to go forward with a fed case. He again sent me questions to answer about Ms. Mann and how and why the district found for her and not me, I stated that the EEOC found for her. I answered them to the best of my ability, but also stating that I could not speak for my administrator's decision or reasoning. I did not hear back from him.

#22 2/20/18 I emailed Mr. Reo again, asking him to answer my 90 day to file questions. Is the 90 days letter date, or postmark, or postal delivery. He responded. Postmark and delivery.

#23 I do not know how the EEOC can have a positive outcome for my coworkers disability and a negative result for my disability.

5. The conduct complained of in this action involves:
(Check all that apply)

- (A) ☐ Failure to employ.
(B) ☐ Termination of employment.
(C) ☐ Denial of participation in public service or program.
(D) ☒ Failure to make alterations to accommodate disability.
(E) ☐ Retaliation.
(G) ☐ Other acts as specified below:

6.

FACTS

On the following page, set forth the facts of your case which substantiate your claim of discrimination. List the events in the order they happened, naming defendants involved, dates and places.

Note: Each fact should be stated in a separate paragraph; paragraphs should be numbered sequentially.

You must include allegations of wrongful conduct as to EACH and EVERY defendant in your complaint.

You may use additional sheets as necessary.

See typed papers for #6.

7. **PRAYER FOR RELIEF**

WHEREFORE, plaintiff(s) request(s) that this Court grant the following relief:

An air condition unit for my classroom
and fees that this suit may have cost me.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: 2/25/18

Lisa Falvotico

Signature of Plaintiff(s)
(all Plaintiffs must sign)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Lisa Faluotico**
296 Maverick Road
Woodstock, NY 12498

From: **New York District Office**
33 Whitehall Street
5th Floor
New York, NY 10004



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

520-2018-00061

Phillp Reo,
Investigator

(212) 336-3772

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Kevin J. Barry,
District Director

11/30/17

(Date Mailed)

Enclosures(s)

cc:

Allen Olsen
Director of Human Resources
KINGSTON CITY SCHOOL DISTRICT
61 Crown Street
Kingston, NY 12401